

140. A collar for limiting the insertion depth of a surgical instrument having a shaft with a grooved portion, the surgical instrument being operated through a guide having a passageway for receiving the shaft, said collar comprising: a pair of diametrically opposed locking members for slidably engaging along the grooved portion of the shaft, said locking members being sized to prevent passage through the passageway of the guide, said locking members engaging the grooved portion when locked, said locking members disengaging the grooved portion when unlocked so as to be slidable along the grooved portion of the shaft.--.

REMARKS

In the Office Action the Examiner allowed claim 90 and rejected claims 67-89 under 35 U.S.C. §102(b) as being anticipated by Ma.

Applicant amended claim 90 to correct minor informalities and added new independent claim 140, also directed to the invention best shown in Figures 13 and 15, to further define Applicant's claimed invention. Applicant canceled claims 67-89 and added new claims 95-139, including independent claim 95 directed to a spinal distractor and independent claims 108 and 139 directed to an apparatus comprising a guard member and at least one disc penetrating extension.

Newly added independent claims 95 and 108 recite that the "disc penetrating extension... for insertion into the lateral aspect of the disc space from a position anterior to the transverse processes of the adjacent vertebrae" has "a portion for bearing against each of the adjacent endplates of the adjacent vertebral bodies". Moreover, claims 95 and 108 recite that the disc penetrating extension has "a length that is less

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than the transverse width of the vertebral bodies" and "greater than the depth" of the spinal disc or disc space intermediate the two adjacent vertebral bodies. Claim 139 recites that the disc penetrating extension extends from the distal end of the guard member and that the disc penetrating extension is separable from the proximal end of the guard and that the disc penetrating extension has "a portion for bearing against each of the adjacent endplates." Applicant submits that neither Ma nor any other art of record, either alone or in proper combination, teaches, discloses or suggests the structure of Applicant's claimed invention.

In particular, the patent to Ma discloses an instrument set consisting of a mortising chisel (50), a bone plug cutter (40), and a bone plug injector (80). (Ma, col. 1, lines 43-54.) The mortising chisel (50) is hammered through the intervertebral disc space to form an opening across the disc space that is greater than the natural disc space. (Ma, col. 5, lines 42-57; and Figs. 8 and 11.) The mortising chisel (50) in the patent to Ma has an end (53) for penetrating the bodies of the adjacent vertebral bodies to "remove portions 20a and 22a of vertebral bodies 20 and 22 and a section of disc 24". (Ma, col. 3, lines 56-64; and See Figs. 1, 6a, 6b, 8, and 14).

The patent to Ma does not disclose a "disc penetrating extension for insertion into the lateral aspect of the disc space from a position anterior to the transverse processes of the adjacent vertebrae" having "a portion for bearing against each of the adjacent endplates of the adjacent vertebral bodies" or a "disc penetrating extension having a height less than the height of said body and a length that is less than the transverse width of the vertebral bodies" and "greater than the depth" of the spinal disc

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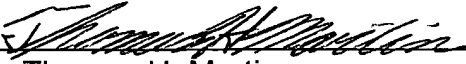
or disc space as recited in independent claims 95 and 108, respectively. Moreover, the patent to Ma does not disclose a "disc penetrating extension extending from said distal end of said guard" and "being separable from said proximal end of said guard" as recited in independent claim 139.

In view of the foregoing remarks, it respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the amendments to the claims and the preceding comments. Issue of a timely notice of allowance for the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this response, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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